Supreme Court, U.S.
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No. 121, Original

In The

Supreme Court of the United States

October Term, 1993

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

ANSWER OF DEFENDANTS JULIA DONELSON EHRHARDT, FORMERLY JULIA DONELSON HOUSTON, RUTH HOUSTON BAKER AND HINES H. BAKER, CO-EXECUTORS AND CO-TRUSTEES OF THE ESTATE OF GEORGE T. HOUSTON, A/K/A GEORGE T. HOUSTON, III, DECEASED, AND RUTH HOUSTON BAKER, INDIVIDUALLY

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Julia Donelson Ehrhardt, formerly Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, deceased, and Ruth Houston Baker, individually (collectively "Houston Defendants") respectfully file this Answer to the Complaint filed by the State of Louisiana ("Louisiana"):

JURISDICTION

COMPLAINT ¶ I: The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States and Par. (a) Section 1251, Title 28, United States Code Annotated.

ANSWER: ADMITTED that this Court has jurisdiction.

COMPLAINT ¶ II: The State of Louisiana was admitted into the Union of the United States of America by the Act of Congress found in chapter 50 of the United States Statutes at Large, vol. 2, page 701, approved April 8, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said Act, were described as follows:

> "Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of 'Louisiana' by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three (8 Stat. at L. 200), between the United States and France, contained within the following limits, that is to say: 'Beginning at the mouth of the river Sabine; thence, by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast. . . . ' "

ANSWER: ADMITTED.

COMPLAINT ¶ III: By the Act of Congress found in the United States at Large, vol. 2, p. 708, chap. 57, approved April 14, 1812, additional territory was added to the then-existing State of Louisiana, which additional territory was described in the following language:

> "Beginning at the junction of the Iberville with the river Mississippi; thence, along the middle of the Iberville, the river Amite, and of the lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl River; thence up the eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the place of beginning, shall become and form a part of the said state of Louisiana. . . . "

ANSWER: ADMITTED.

COMPLAINT ¶ IV: The territory lying adjacent to, and to the eastward of Louisiana, is the State of Mississippi, which latter state was admitted into the Union of the United States of America by the Act of Congress, approved March 1, 1817, 3 Stat 348 (U.S. Statutes at Large, vol. 3, chap. 23, page 348), whereby the inhabitants of the western part of the then-Mississippi territory were authorized to form for themselves a state constitution and to be admitted into the Union, the boundaries of the then-to-be-created state being described as follows:

> "Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest

corner of the county of Washington 'Alabama'; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of the Pearl River with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning.

ANSWER: ADMITTED.

COMPLAINT ¶ V: The effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. Such original eastern boundary from the northeast tip of the State of Louisiana to said 31st degree of north latitude is common with the State of Mississippi.

ANSWER: DENIED as alleged. Generally, the thalweg of the Mississippi River may be said to constitute the boundary between the States of Louisiana and Mississippi. However, that general rule may be inapplicable under specific factual circumstances.

COMPLAINT ¶ VI: Under the law of Louisiana, the State of Louisiana owns the bed of the Mississippi River to the boundary line of the States of Louisiana and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said states. This Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state.

ANSWER: First sentence ADMITTED as a general statement of Louisiana and Mississippi law. Second sentence ADMITTED.

COMPLAINT ¶ VII: Until recently the primary interest in the determination of the exact boundary line in the Mississippi River between the two states has been as to navigation and fishing rights, and to masses of land where an avulsion has taken place.

ANSWER: DENIED.

COMPLAINT ¶ VIII: On the 29th day of July, 1986, there was filed in the United States District Court, Western Division of the Southern District of Mississippi, a complaint entitled *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B). This Complaint to Remove Cloud filed against Louisiana residents and attacking the ownership of property of the State of Louisiana, raises the issue in this case as to the true location of the boundary between the States of Louisiana and Mississippi common to the Parish of East Carroll, Louisiana, and the County of Issaquena, Mississippi.

ANSWER: ADMITTED as to first sentence. DENIED as to second sentence. The Complaint did not name Louisiana as a defendant. Louisiana intervened asserting title.

COMPLAINT ¶ IX: In the said action presently pending in the United States District Court as aforesaid, complainants claim ownership of a portion of lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

ANSWER: ADMITTED that the Houston Defendants claim ownership to lands involved in the litigation, Stack Island or Island No. 94 and all accretions thereto ("Stack Island"). DENIED that Louisiana has asserted continuing jurisdiction, dominion and control over said area under its inherent sovereignty or otherwise.

COMPLAINT ¶ X: The above referenced action filed herein is styled as a Complaint to Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, as against numerous defendants as residents and domiciliaries of the State of Louisiana.

ANSWER: ADMITTED.

COMPLAINT ¶ XI: Complainants in the district court recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi.

ANSWER: ADMITTED in part. The Houston Defendants, complainants in the district court, also claim title by deed from the State of Mississippi and adverse possession.

COMPLAINT ¶ XII: Complainants allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

ANSWER: ADMITTED.

COMPLAINT ¶ XIII: The State of Louisiana and the Lake Providence Port Commission, a political subdivision of the state, intervened in the federal district court action

in June, 1987, asserting that their rights arise under the Constitution of the United States and an Act of Congress approved April 8, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found at 2 Stat 701 (U.S. Statutes at Large, Vol. 2, chap. 50, p. 701).

ANSWER: ADMITTED as alleged, but any implication that Louisiana has any right or title to the lands in question is DENIED.

COMPLAINT ¶ XIV: The original complainants responded to the intervention and thereafter the State of Louisiana and the Lake Providence Port Commission filed a Third-Party Complaint against the State of Mississippi. The State of Mississippi answered the Third-Party Complaint.

Thereafter, the case followed the course set forth in detail in paragraphs 8 through 12 of the attached motion for leave to file a bill of complaint, having been rejected by this Court twice on earlier motions for original jurisdiction, then tried, appealed and heard on certiorari. This action is now in nearly identically the same posture as when originally commenced by private plaintiffs suing other private defendants in the District Court for the Southern District of Mississippi. The State of Louisiana is still seeking to determine its true legal boundary with the State of Mississippi in the vicinity of the disputed lands, which it owns.

ANSWER: ADMITTED as to the first paragraph and that the Mississippi court case followed the chronology set out in paragraphs 8 through 12 of the Motion of

Louisiana for Leave to File Bill of Complaint. DENIED as to Louisiana's claim of ownership.

COMPLAINT ¶ XV: The real question in dispute between plaintiff and defendants is the true location of the boundary line between the State of Louisiana and the State of Mississippi, which is dependent upon a determination of the location of both a frozen thalweg and the live thalweg, which follows the course of the Mississippi River itself as its bed and channel move with the gradual processes of accretion and erosion.

ANSWER: ADMITTED that a question in dispute is the location of the boundary between Mississippi and Louisiana. Otherwise DENIED as alleged. Insofar as the Houston Defendants are concerned, the dispute relates to title to Stack Island, claimed by the Houston Defendants and their predecessors since at least 1881.

COMPLAINT ¶ XVI: However, the determination of this river boundary also involves an interpretation of the acts of Congress setting forth the boundaries and determination of the boundaries between said two states, as well as the equal footing doctrine applicable to the states of the United States.

ANSWER: DENIED. The Houston Defendants know of no disagreement between the parties with respect to the interpretation of any act of Congress or the equal footing doctrine.

COMPLAINT ¶ XVII: Further, the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat 80, is also involved in this controversy, including an interpretation thereof as it

affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which can only be made pursuant to the Constitution of the United States and federal law.

ANSWER: ADMITTED that the determination of the boundary between Mississippi and Louisiana is a matter of federal law but otherwise DENIED, as the Houston Defendants know of no dispute regarding the interpretation of the referenced Peace Treaty.

COMPLAINT ¶ XVIII: Consequently, in the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Louisiana in the area at controversy becomes of major and substantial significance to the respective states, in view of the great value of the lands and water bottoms for navigational, hunting, fishing, timber and recreational purposes, as well the potential for the production of oil, gas and other minerals. Heretofore, it has not been necessary to determine with preciseness the exact location of such boundary line. This controversy now makes such a determination essential to the two sovereign states, as well as to their citizens.

ANSWER: ADMITTED that the boundary line between Mississippi and Louisiana in the area in controversy is a matter of substantial significance to the respective states. DENIED that the boundary issue has not previously been a matter of significance with respect to such states. DENIED to the extent the implication exists that the ownership of the "area at controversy" is necessarily controlled by the determination of the boundary between

Louisiana and Mississippi or that there is any "great" value for oil, gas, or other minerals involved.

COMPLAINT ¶ XIX: The property rights, the sovereign rights and the sanctity of the boundary between the States of Louisiana and Mississippi are inextricably involved in the litigation which commenced this controversy, thus instituted and pending in the United States District Court for the Western Division of the Southern District of the State of Mississippi, and said Court is not the forum proper to such determinations. Nor is the State of Louisiana required to submit its title to said Court, nor should it be.

ANSWER: ADMITTED that this Court is a proper forum for determination of the issues in this litigation. DENIED that the Houston Defendants' title is dependent upon the location of the boundary between Mississippi and Louisiana. DENIED as to all other allegations.

COMPLAINT ¶ XX: The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties and it alone has the power to fix and determine the boundary lines herein described. The suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, should be stayed by Order of this Court until a final judgment herein can be had, and application is hereby made by the State of Louisiana for an Order to be issued by this Court, directed to the United States District Court, Western Division of the Southern District of Mississippi, staying all proceedings in said suit.

ANSWER: ADMITTED that the decision of the Supreme Court will be conclusively binding on all private parties.

Otherwise DENIED. Further, this Court has denied Louisiana's requested stay.

COMPLAINT ¶ XXI: The jurisdiction of the Supreme Court of the United States in boundary disputes between States is exclusive and original and, accordingly, it is appropriate that the suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, be stayed and all parties thereto be served with a copy of the Stay Order herein applied for, and be given the opportunity to assert such interests as they may have in this action.

ANSWER: ADMITTED that this Court has determined that its jurisdiction in this boundary dispute between Mississippi and Louisiana is original and exclusive. The remainder of the paragraph is DENIED. This Court has denied Louisiana's requested stay.

FIRST AFFIRMATIVE DEFENSE

Whatever the location of the boundary between Mississippi and Louisiana in the area of Stack Island, the Houston Defendants have legal, record title to Stack Island pursuant to a patent issued by the United States in 1888, effective 1881.

SECOND AFFIRMATIVE DEFENSE

The Houston Defendants have legal, record title to Stack Island pursuant to conveyances from the State of Mississippi.

THIRD AFFIRMATIVE DEFENSE

The State of Mississippi, through long-continued acts of assertion of jurisdiction and the exercise of dominion and control over the landmass known as Stack Island, has acquired jurisdiction of Stack Island, and Stack Island lies within the territorial limits of the State of Mississippi without regard to the location of the navigational course of the river. Mississippi has continuously assessed and collected taxes on Stack Island for more than 100 years. Louisiana has never assessed or collected taxes on the island. Through its courts, Mississippi has exercised jurisdiction over controversies involving ownership of the island. Louisiana has not.

FOURTH AFFIRMATIVE DEFENSE

Under the decisions of this Court, an island once within the jurisdiction of a particular state remains within that state's jurisdiction, without regard to changes in the location of a navigational course of the river in which such island is situated.

FIFTH AFFIRMATIVE DEFENSE

Stack Island has been clearly identifiable and traceable from early maps of the Mississippi River and aerial photographs as a single identifiable landmass for a period of more than 150 years.

SIXTH AFFIRMATIVE DEFENSE

The Houston Defendants and their predecessors in title have occupied the lands known as Stack Island, have

exercised exclusive, uninterrupted, open, and adverse possession and control, and have paid taxes on such property to the State of Mississippi or its political subdivisions for more than 100 years.

WHEREFORE, the Houston Defendants pray:

1. That this Court appoint a Special Master in this original action;

2. that the boundary between the State of Louisiana and the State of Mississippi be fixed, recognized, and determined and that the landmass known as Stack Island be held to be within the territorial boundaries of the State of Mississippi;

3. that the prayer for relief contained in Louisiana's complaint be otherwise denied and that the claim of the Houston Defendants to Stack Island be quieted against the State of Louisiana;

4. that all costs incurred in this original action be assessed against the Plaintiff, State of Louisiana; and

5. that the Houston Defendants have and recover such other and further relief as they may be shown justly entitled to receive.

Respectfully submitted,

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